

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANFORTH & ASSOCIATES, INC., a
Washington corporation,

Plaintiff,

v.

COLDWELL BANKER REAL ESTATE,
LLC, a California limited liability company,

Defendant.

NO.

COMPLAINT

Danforth & Associates, Inc. dba Coldwell Banker Danforth allege as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Danforth & Associates, Inc. dba Coldwell Banker Danforth (“Danforth”) is a Washington corporation in good standing doing business in the Puget Sound area as a franchisee of Coldwell Banker Real Estate, LLC.

2. Defendant Coldwell Banker Real Estate, LLC (“CB”) is a California limited liability company with its principal place of business in Parsippany, New Jersey.

3. Jurisdiction lies with this court under (i) 28 U.S.C. §§1331 and 1337 based on the claim herein under 15 U.S.C. §1 and §2 and (ii) 28 U.S.C. §1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000. Supplemental jurisdiction also exists under 28 U.S.C. §1367 for state law claims.

COMPLAINT

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1 4. Venue is proper under 28 U.S.C. §1391 because a substantial part of the acts
2 and omissions complained of occurred in the Western District of Washington.

3 II. STATEMENT OF FACTS

4 5. CB, according to its website, is one of the world's premier real estate
5 organizations with a presence in 49 countries and territories, with more than 98,000 sales
6 associates and brokers are affiliated with 3,600 offices.

7 6. CB advertises franchising opportunities to the public on its website, which
8 states that "We're Serious About Your Success."

9 7. CB has a significant presence in Washington with 71 offices.

10 8. Of those Washington offices 24 are operated by The Landover Corporation
11 dba Coldwell Banker Bain ("Bain"), which has over 1093 agents in Washington. Bain is the
12 largest franchisee in the state and the second largest franchisee in the country, including its
13 Oregon counterpart, dba Barbara Sue Seal ("Seal"). According to Bain's website, out of all
14 of the CB offices, Bain has been "Number One Company Internationally" for the last 5 years,
15 a distinction awarded to the CB residential affiliate with highest Closed Adjusted Gross
16 Commission Income.

17 9. Danforth operates three offices with 360 agents.

18 10. Danforth entered into a franchise agreement with CB and acquired its first
19 office location, in Federal Way, Washington, in October 1993. The current Franchise
20 Agreement, effective October 1, 2001, terminates in May 2019.

21 11. Since the time of its original franchise agreement, Danforth has intended to
22 grow its operations and to expand into additional locations in the Puget Sound area as market
23 conditions warrant. Danforth has been a successful operation, having been a Chairman's
24 Circle Company for the last 6 years, a designation reserved for offices with greater than
25 \$8,000,000/year Gross Commission Income.
26

1 12. Under the current CB/Danforth Franchise Agreement the right to open
2 additional locations is subject to standards which CB “in its reasonable judgment” applies to
3 proposed locations. It was Danforth’s expectation that these standards would be applied
4 equally to all franchises, including Danforth.

5 13. In July 2008, Danforth identified a location in the Northgate area of Seattle,
6 WA where it wanted to open an additional location. CB informed Danforth that there were
7 two criteria for opening a new location: (1) the new location had to be at least two (2) and
8 preferably five (5) miles from the physical location of another CB office, and (2) the new
9 location had to be in a market in which CB did not have the current dominant market share.
10 Danforth’s proposed location met these two criteria. The proposed office location was 5.3
11 miles from the closest CB office. More importantly, CB commanded only a 7% market share
12 compared to its primary competitor, Windermere Real Estate, which enjoyed a dominant
13 42% share. Danforth submitted its proposal in August 2008.

14 14. Danforth’s Northgate expansion proposal was denied in late August 2008 by a
15 phone call. CB provided no written reason for the denial.

16 15. A CB representative stated that the reason for the denial was that CB had
17 entered into an agreement with Bain, when Bain originally bought their franchise, that gives
18 Bain an exclusive right to expand in the four county area of King, Pierce, Kitsap and
19 Snohomish. The representative further stated that because this agreement pre-dated the
20 Danforth franchise agreement by approximately 2 weeks, Danforth and CB are bound by the
21 agreement. The existence of Bain’s exclusive right was not disclosed to Danforth when it
22 purchased the original franchise in 1993.

23 16. After the revelation of Bain’s exclusive right to expand, Danforth asked CB
24 for help to locate existing franchises that pre-dated the Bain franchise in order to expand in
25 the Puget Sound area.
26

1 17. With the help of CB, Danforth located three potential franchisees for sale that
2 pre-dated Bain's franchise. In 2008 Danforth acquired the stock of Del Bianco Realty, Inc.
3 ("Del Bianco") an existing CB franchise, which predated Bain.

4 18. On November 7, 2008, Coldwell Banker Danforth under the Del Bianco name
5 submitted another application for the Northgate location.

6 19. CB denied the expansion request. Again, CB provided no written reason for
7 denial. However Danforth was told orally that the proposed location was again too close to a
8 Bain office.

9 20. In December 2008, Danforth re-submitted its application under the Del
10 Bianco franchise because the CB representative was very specific in stating that this newest
11 application had to be made only under the Del Bianco name. As an additional inducement to
12 CB, Danforth went so far as to offer certain financial guarantees to reduce the financial risk
13 to CB, such as not opening the office until at least 20 agents had committed to the new office
14 location and guaranteeing a specific commission income to CB.

15 21. Surprisingly, CB denied the Northgate application again, stating in writing
16 that the proposed office was too close to an existing member, CB Bain.

17 22. Based on this apparent arbitrary and discriminatory enforcement of the two
18 (2) and five (5) mile location requirement, Danforth vigorously protested CB's decision to
19 deny the Northgate location. CB then told Danforth to re-submit, once again re-iterating that
20 the application could be only submitted under the Del Bianco franchise.

21 23. CB then granted Danforth its Northgate application.

22 24. As a non-negotiable condition of approval of the Northgate location, CB
23 required Danforth to agree to a "no-hire/no-recruit" provision by which Danforth is
24 prevented from hiring or recruiting any former agents that were with companies owned by
25 the Landover Corporation or William Riss, which includes Bain and its Oregon counterpart,
26

1 Seal. Danforth is not aware of any other similar “no-hire/no-recruit” restriction in favor of
2 other local franchisees. It is apparent that Bain is under no similar restriction, since Bain
3 recruited agents out of the Danforth’s Federal Way office and Coldwell Banker Park Shore’s
4 office when Bain opened offices near those locations.

5 25. The Northgate location has been very successful for Danforth and CB.

6 26. On December 31, 2009 all rights to the Del Bianco Franchise Agreement were
7 assigned to and assumed by Danforth. The assignment specifically provides that “for
8 purposes of determining any territorial or exclusivity rights that may pertain to the Franchise
9 or the office locations identified herein, all rights of the new Franchisee shall date back to the
10 original date of execution of the Franchise Agreement of April 16, 1993.” CB consented to
11 this assignment.

12 27. In June 2010, Danforth applied to open a new office location in Bellevue,
13 Washington. Again the proposed office location met the two general criteria set forth by CB.
14 The proposed location is more than 3 miles from the closest CB office. CB commands only
15 an 11.6% market share compared with Windermere (25.4%) and John L. Scott (14%).

16 28. Again CB denied the application with no written reason. A CB official gave
17 a verbal response that the proposed Danforth office was too near to an existing Bain office.

18 29. Danforth again protested CB’s decision to deny the location. In response, CB
19 informed Danforth that proximity to existing offices was one of many factors applied to new
20 outlets and that the proposed office “would have resulted in the breach of franchise
21 agreement.” In later correspondence CB confirmed that it had entered into the referenced
22 franchise agreement after the opening of Danforth’s Northgate office. Danforth reasonably
23 believes the referenced franchise agreement is with Bain.

24 30. CB has denied Danforth’s request to review the referenced franchise
25 agreement.
26

1 31. CB does not routinely apply or enforce the two (2) and five (5) mile restriction
2 between CB offices. By way of example:

3 A. In 2001, CB granted Bain a new location only 1.9 miles from
4 Danforth's principal location in Federal Way, Washington.

5 B. In 2008, CB granted Bain a new location only 2.5 miles from the
6 Coldwell Banker Park Shore office in Port Orchard, WA.

7 32. Every month that the Bellevue office is not open, Danforth loses significant
8 profits, and Danforth is unable to use this office's gross commission income toward
9 Danforth's performance bonus.

10 33. Every month that the Bellevue office is not open, consumers have fewer
11 choices for real estate services.

12 34. Danforth's commission structure differs from Bain's in that Danforth allows
13 listing agents to negotiate and/or reduce their share of commissions. There is a potential for
14 property sellers to save thousands of dollars by choosing a Danforth agent over a Bain agent,
15 while still getting all the benefits of listing with the well known Coldwell Banker name and
16 receiving the benefits of Coldwell Banker's marketing tools. Bain has complained to CB that
17 this amounts to Danforth operating a discount brokerage.

18 35. CB has demonstrated arbitrary and discriminatory treatment of franchisees in
19 another manner.

20 36. CB franchisees must comply with strict criteria with respect to advertising and
21 signage that are set forth in the CB's Identity Standards Manual.

22 37. These criteria include that the franchisee "doing business as" ("DBA")
23 designation on advertising and property signage must not be larger than the stacked Coldwell
24 Banker designation.
25
26

39. Furthermore CB allows Bain to market upper end homes under the trade name “Exceptional Properties International, Coldwell Banker Bain.” All other franchisees in the Puget Sound area and in the United States are required to market their upper end properties under the standard “Coldwell Banker Previews.”

40. This difference in labeling causes major brand confusion for potential buyers of upper end homes in the Puget Sound area.

41. CB's action, in allowing Bain to have preferential labeling and signage to acquire greater name recognition in the Puget Sound area, operates to the detriment of Danforth and all other local franchisees.

42. By restricting Danforth's office locations, including contractual provisions that favor Bain, and granting other advantages in favor of Bain, CB, with Bain's influence, unfairly reduces the choices of the consumer in the Puget Sound market.

III. CLAIMS

A. First Cause of Action – 15 U.S.C. §1

43. CB has conspired by written agreement or otherwise in a manner which imposes burdens upon Danforth that are not imposed upon Bain and result in distinct disadvantage to Danforth and an advantage to Bain in its daily business. The conspiracy between CB and Bain results in a horizontal restraint on Danforth's ability to expand into favorable locations, to hire former Bain agents and employees and is a *per se* unlawful restraint on competition. Those agreements constitute a contract, combination or conspiracy

1 in restraint of trade in interstate commerce. Danforth has been damaged by this conspiracy in
2 an amount to be proven at trial.

3 B. Second Cause of Action – Violation of the Washington Franchise Act

4 44. Under RCW 19.100.180(2), the franchisee “Bill of Rights”, CB has an
5 obligation not to discriminate between franchisees and to act in good faith. The only
6 exception to the obligation not to discriminate is if the franchisor satisfies the burden of
7 proving that discrimination between franchisees was reasonable, and based upon franchises
8 granted at materially different times and such discrimination is based on other proper and
9 justifiable distinctions considering the purposes of the chapter.

10 45. CB’s favorable treatment of Bain, in the approval of expansion locations,
11 protection of agents, and allowable signage and branding results in discrimination between
12 franchisees is not reasonable and not based upon proper and justifiable distinctions.

13 46. CB’s discriminatory behavior is also a breach of CB’s statutory and
14 contractual obligation to deal with Danforth in good faith.

15 47. Danforth has been damaged by CB’s violations of RCW 19.100.180(2) in an
16 amount to be proven at trial, but which amount exceeds \$75,000.

17 C. Third Cause of Action – Breach of Contract

18 48. CB has failed to apply “its reasonable judgment” in granting additional office
19 locations to Danforth as required under the current franchise agreement between CB and
20 Danforth and is therefore in breach of that agreement. Danforth has been damaged in an
21 amount to be proven at trial, but which exceeds \$75,000.

22 D. Fourth Cause of Action – Violation of Washington Consumer Protection Act,
23 RCW 19.86

24 49. A violation of RCW 19.100.180(2) is an unfair or deceptive act or practice
25 under RCW 19.86.
26

1 50. CB offers franchises to the public, and other potential franchisees have the
2 potential to be subjected to discrimination in a manner similar to that of Danforth.

3 51. CB's discriminatory practices have damaged Danforth by not allowing it to
4 expand into areas that Danforth believes would be viable expansion locations.

5 52. The discriminatory practice of approving of Bain locations in close proximity
6 to Danforth offices has likewise damaged Danforth.

7 53. Danforth has been damaged in an amount to be proven at trial, but in excess of
8 \$75,000.

9 54. The public is also negatively impacted by CB's favoritism since it reduces the
10 number of franchisees from which they can choose in the Puget Sound market and the
11 opportunity for sellers to pay a reduced rate for the real estate services rendered.

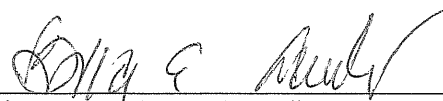
12 IV. RELIEF REQUESTED

13 Danforth prays for the following relief:

- 14 A. For damages in an amount to be proved at trial, trebled;
15 B. For injunctive relief;
16 C. For attorneys fees and costs; and
17 D. For such other relief as the Court deems just and proper.

18 DATED this 8th day of October, 2010.

19 SOCIUS LAW GROUP, PLLC

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